

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5532 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

HEIRS OF DECEASED DESAIBHAI SHIVABHAI

Versus

STATE OF GUJARAT

Appearance:

Shri D.R.Bhatt, Advocate, for the Petitioners.

Shri T.H.Sompura, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 03/09/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 10th May 1993 under

Section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the Appellate Authority for convenience) on 31st March 1995 in Appeal No.Ahmedabad-105 of 1993 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of the deceased predecessor-in-title of the petitioners herein to be in excess of the ceiling limit by 23069 square metres.

2. The facts giving rise to this petition move in a narrow compass. One Desaibhai Shivabhai Patel (the deceased for convenience) filed his declaration in the prescribed form under Section 6 (1) of the Act with respect to his holding within the urban agglomeration of Ahmedabad. When it was taken up for processing, the deceased had breathed his last on 24th January 1986 leaving behind him the present petitioners as his heirs and legal representatives. On receipt of the draft statement and the notice under Section 8 (3) of the Act, they appeared before respondent No.2. After hearing the parties, by his order passed on 10th May 1993 under Section 8 (4) thereof, respondent No.2 declared the holding of the deceased to be in excess of the ceiling limit by 23069 square metres. Its copy is at Annexure-B to this petition. The aggrieved petitioners carried the matter in appeal before the Appellate Authority under Section 33 of the Act. It came to be registered as Appeal No.Ahmedabad-105 of 1993. By his order passed on 31st March 1995 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure-C to this petition. Pursuant thereto, the notification under Section 10 (1) of the Act came to be issued on 15th June 1993 and published on 14th October 1993 followed by the notification under Section 10 (3) thereof issued on 13th February 1996. Its copy is at Annexure-G to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-C to this petition and all consequential actions pursuant thereto.

3. Learned Advocate Shri Bhatt for the petitioners has submitted that the benefit of the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF UTTAR PRADESH reported in AIR 1993 Supreme Court at page 2465 ought to have been given to the agricultural lands held by the deceased. As rightly submitted by

learned Assistant Government Pleader Shri Sompura for the respondents, applicability of the aforesaid binding ruling of the Supreme Court would involve investigation into certain fact-situation. According to him, it has to be ascertained whether or not any master plan answering its definition contained in Section 2 (h) of the Act was in existence and what the situation of the agricultural lands was therein if it was in existence. It has further to be ascertained whether or not agricultural operations were, in fact, carried on therein on the date of commencement of the Act.

4. It is obvious that the attention of the authorities below was not focused on this aspect of the matter. The matter will have therefore to be remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of the aforesaid three questions and in the light of the law applicable at the relevant time. The impugned orders at Annexures-B and C to this petition will have therefore to be quashed and set aside. All consequential actions pursuant thereto will have also to be quashed and set aside.

5. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 10th May 1993 at Annexure-B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 31st March 1995 in Appeal No.Ahmedabad-105 of 1993 at Annexure-C to this petition together with consequential actions pursuant thereto is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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